

1500 K Street N.W.
Suite 1100
Washington, DC
20005-1209

202-842-8800
202-842-8465 FAX
www.dbr.com

PHILADELPHIA
WASHINGTON
BERWYN
NEW YORK

DrinkerBiddle&Shanley LLP
PRINCETON
FLORHAM PARK

February 8, 2000

EX PARTE OR LATE FILED

VIA HAND DELIVERY

RECEIVED

FEB 08 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
The Portals
445 Twelfth Street, S.W.
Washington, D.C. 20554

RE: Federal-State Joint Board on Universal Service; Promoting Deployment and
Subscribership in Unserved and Underserved Areas, Including Tribal and Insular
Areas (CC Docket No. 96-45)

General Communication, Inc., Petition for Preemption Pursuant to Section 253 of
the Communications Act of 1934 (CC Docket No. 98-4)

Written Ex Parte Presentation

Dear Ms. Salas:

On behalf of General Communication, Inc. ("GCI"), we are submitting additional
information for the record in the referenced proceedings.

In a Further Notice of Proposed Rulemaking released September 3, 1999, the
Commission solicited comments on issues that affect universal service in unserved and
underserved areas of the nation. On December 17, 1999, GCI submitted comments
specifically discussing issues pertinent to the provision of universal service in Alaska.
Among the issues addressed, GCI identified the use of satellite technology in Alaska as a
cost-effective means for providing service to remote Alaska villages and areas. GCI
noted, however, that state and federal regulations preclude the expansion of its existing
Demand Assigned Multiple Access ("DAMA") technology earth station network to
additional rural villages (at 3). GCI now provides additional information about the
referenced regulations.

Federal Policy for Alaska Bush Communities

In 1982, the Commission adopted a policy on the ownership and operation of domestic
earth stations in Alaska's Bush communities¹ that permits the licensing of only one

¹ A "Bush community" is located in a remote community that has less than 1,000
citizens.

Ms. Magalie Roman Salas

February 8, 2000

Page 2

satellite earth station in each Bush community to provide conventional interexchange message telecommunications services ("MTS").² At that time, the Commission found that duplicative facilities in the Bush communities are not in the public interest because one facility can provide all the services that other parties may propose to offer. As a result, Alascom, Inc., a wholly-owned subsidiary of AT&T, maintains the authorizations to operate the constructed facilities and provide MTS service and is the only Alaska service provider that operates unfettered by the Commission's Bush policy.

In 1996, GCI obtained a partial waiver of the Commission's Bush policy to conduct a 50-site satellite communications demonstration project in the Alaska bush.³ The International Bureau concluded that the partial waiver served the public interest by providing the Bush communities with "increased service options, improved quality, and lower rates"⁴ The demonstration project has in fact achieved these results.⁵ For the purpose of the demonstration project, GCI is utilizing the DAMA-based satellite system, which is efficient, reliable, and cost-effective, as described in GCI's December 17 comments. GCI's demonstration continues today, and its subsequent request for an extension of the two-year waiver remains pending.

² Policies and Rules Governing the Ownership and Operation of Domestic Satellite Earth Stations in Bush Communities in Alaska, Tentative Decision, 92 F.C.C.2d 736 (1982), aff'd, Final Decision, 96 F.C.C.2d 522 (1984); see also RCA Global Communications, Inc., Memorandum Opinion and Order and Authorization, 56 FCC 2d 660, 689 (1975).

³ Petition of General Communication, Inc. for a Partial Waiver of the Bush Earth Station Policy for a Partial Waiver of the Bush Earth Stations Policy, Memorandum Opinion and Order, 11 FCC Rcd 2535 (1996). In 1990, GCI petitioned the Commission to begin a rulemaking to alter or abolish its policy regarding the construction of competing earth stations in rural Alaska. See RM-7246. The Commission received comments and reply comments in that rulemaking proceeding, but has not issued an order on GCI's petition.

⁴ Memorandum Opinion and Order, 11 FCC Rcd at 2537 (¶ 9).

⁵ "In general, quality of service and ability to transmit data has improved for customers served by the GCI DAMA Project. . . . Many customers have experienced lower bills as a result of a competitive choice and improved subscription to Alascom optional calling plans. . . . Overall, customers in the GCI Project area appear better off with the Project than without the Project." RCA Staff Report, Docket U-98-38 at 2 (RCA Sept. 9, 1998).

Ms. Magalie Roman Salas
February 8, 2000
Page 3

Alaska Policy for Bush Communities

In 1990, the Alaska Public Utilities Commission ("APUC") promulgated 3 AAC 52.355 to prohibit facilities-based long distance competition in rural Alaska.⁶ Specifically, the APUC determined that "facilities-based competition should not be allowed outside of the locations listed in the revised regulation."⁷ Subsection 52.355(a)(1) enumerates locations within the State of Alaska in which "[a]ll interexchange carriers are permitted to construct facilities and use those facilities in the provision of intrastate interexchange telephone service"⁸ Subsection 52.355(a)(2), however, provides:

In a location not listed in (1) of this subsection, only the incumbent carrier is permitted to construct facilities and use those facilities in the provision of intrastate interexchange telephone service.⁹

Thus, subsection 52.355(a)(2) operates as a prohibition on the competitive, facilities-based entry of non-incumbent intrastate interexchange service providers. As under the federal Bush policy, only Alascom is permitted to construct facilities in certain locations in Alaska. In 1995, shortly before receiving a partial waiver of the Commission's Bush policy, GCI received a limited waiver of Section 52.355(a) from the APUC, providing GCI the necessary state approval to conduct the 50-site project.¹⁰

The APUC has since been replaced by the Regulatory Commission of Alaska ("RCA"), which has regulatory authority over the telecommunications industry and a variety of public utilities. The regulation prohibiting Bush competition was carried over and remains in full force and effect, as were all regulations in effect at the time of the RCA's constitution. GCI believes that Section 52.355(a) violates Section 253 of the Communications Act and has requested that the Commission preempt this regulation.¹¹ The petition remains pending.

⁶ Regulations Governing the Market Structure for Intrastate Interexchange Telecommunications Service, Order No. 6, 10 APUC 407 (1990).

⁷ Id. at 412-13.

⁸ 3 AAC § 52.355(a)(1).

⁹ Id., § 52.355(a)(2).

¹⁰ See Request by General Communication, Inc., for Waiver of 3 AAC 52.355(a) and Approval of a 50-Site Demonstration Project, Bench Order, Docket U-95-38(8) (APUC Nov. 9, 1995).

¹¹ General Communication, Inc., Petition for Preemption Pursuant to Section 253 of the Communications Act of 1934 (CC Docket No. 98-4) (filed Jan. 21, 1998).

Ms. Magalie Roman Salas

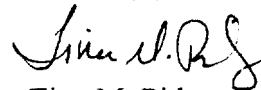
February 8, 2000

Page 4

Due to the federal policy and state regulation of competition in the Alaska bush, GCI's ability to serve these communities using its own facilities is currently limited to the 50-site DAMA project. GCI does not have permanent authority for this system, but constructed and operates it pursuant to the limited waivers as described above. Therefore, GCI has been unable to expand its satellite network for the benefit of subscribers in additional remote areas. GCI urges the Commission to address this issue as it considers the provision of universal service to unserved and underserved areas.

Any questions regarding this matter should be addressed to the undersigned at (202) 842-8812.

Sincerely yours,



Tina M. Pidgeon

cc: Gene Fullano, Esq.
Accounting Policy Division

Jimmy Jackson, Esq.
General Communication, Inc.